

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

United State of America f/u/b/o Metro
Mechanical, Inc.

Plaintiff,

v.

Triangle Construction Co., Inc.; and U.S.
Specialty Insurance Company

Defendants.

Civil Action No. 3:17-cv-718-DCB-LRA

**MEMORANDUM OF LAW IN SUPPORT OF TRIANGLE CONSTRUCTION
CO., INC'S [ECF DOC. NO. 7] MOTION TO DISMISS FOR LACK OF
FEDERAL SUBJECT MATTER JURISDICTION**

(HEARING REQUESTED)

COMES NOW Defendant/Movant, Triangle Construction Co., Inc. ("Triangle"), under Federal Rule of Civil Procedure 12(b)(1), who files this Memorandum of Law in Support of [ECF Doc. No. 7] Motion to Dismiss Complaint for Lack of Federal Subject-Matter Jurisdiction, and pleads as follows:

1. The sole pleaded basis for federal subject matter over this dispute in the Plaintiff's Complaint is the federal Miller Act, 40 U.S.C. § 3131. *See* Complaint at Paragraph 3.

2. This pleaded basis for federal subject matter jurisdiction in the Plaintiff's Complaint fails on its face. The federal Miller Act is **not** implicated in this payment dispute, as the payment bonds referenced in Plaintiff's Complaint are all payment bonds for private projects (not federal, government-owned projects). To repeat: all four of the projects

referenced in the Plaintiff's Complaint – Susie B. West; Lower Woodville; MLK Apts.; and Greenbriar Apts. – are **private** (privately owned apartment complexes that were rehabilitated, in part, with financing derived from the private placement of privately-syndicated tax credits awarded by the Mississippi Home Corporation) projects, within the meaning of the Miller Act.

3. A very comprehensive, yet easy-to-follow, Overview of the Low-Income Tax Credit (LIHTC) Program, published by the Office of the Comptroller of the Currency in March 2014, is attached to, and incorporated into, this Memorandum as Exhibit “1”. As stated in Ex. 1: “The LIHTC program provides **tax incentives** to encourage **individual and corporate investors** to invest in the development, acquisition, and rehabilitation, of affordable rental housing.” Ex. 1, at Page 1-2 (emphasis added).

4. These projects are all owned by private Mississippi, for-profit, limited partnerships. None of these projects are owned by any governmental entity in any way. These four projects, at issue in this dispute, are private, tax-credit-incentivized apartment complexes to which Triangle Construction Co., Inc., acting as General Contractor, has performed rehabilitations on behalf of their private, limited-partnership-owners.

5. There is, on the face Plaintiff's Complaint, no basis for subject matter jurisdiction over this state-law payment-dispute under the federal Miller Act. These projects are not public projects.

Respectfully submitted,

TRIANGLE CONSTRUCTION CO., INC.

BY: s/ Macy D. Hanson
OF COUNSEL

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CERTIFICATE OF SERVICE

I, Macy Hanson, attorney for Triangle Construction Co., Inc., do hereby certify that I have filed a true and correct copy of the foregoing pleading with the Clerk of Court via the ECF system, which send notice to all counsel of record.

THIS, the 12th day of October, 2017.

/s/ Macy D. Hanson